

EXHIBIT A

NUMBER NC-15-1120
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT -BANKRUPTCY APPELLATE PANEL

ANTON A. RIVERA and DENISE A. RIVERA,
Debtors-Appellants
Vs.
DEUTSCHE BANK NATIONAL TRUST COMPANY as TRUSTEE of
CERTIFICATE HOLDERS OF THE WAMU MORTGAGE PASS
THROUGH CERTIFICATES SERIES 2005-AR6
Claimant –Appellee

APPELLANTS AMENDED EXCERPT OF RECORD

VOLUME 1

Appeal from the United States Bankruptcy Court, Northern California -
Oakland Division for the Ninth District of California,
BK Case Number: 14-54193 MEH 13
Honorable Judge M. Elaine Hammond

Ronald H. Freshman (SBN # 225136)
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1 UNITED STATES BANKRUPTCY COURT
2 NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

3 In re:) **Case No. 14-54193**
4) Chapter 13
5 ANTON ANDREW RIVERA and)
6 DENISE ANN RIVERA,) February 25, 2015
7) Oakland, California
8 Debtors.) 9:00 a.m.
9)
10) TRIAL - OBJECTION TO DEUTSCHE
11) BANK PROOF OF CLAIM (32);
12) DEUTSCHE BANK'S MOTIONS IN
13) LIMINE #1, #2, AND #3
14) (146, 148, 153); DEBTOR'S
15) OPPOSITIONS (147, 151);
16) DEBTOR'S MOTION IN LIMINE
17) (148)
18)
19)
20)
21)
22)
23)
24)
25)

12 TRANSCRIPT OF PROCEEDINGS
13 BEFORE THE HONORABLE M. ELAINE HAMMOND,
14 UNITED STATES BANKRUPTCY JUDGE.

14 APPEARANCES:

15 For the Debtor: Ronald H. Freshman
16 Kimberly Cromwell, Paralegal
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19 David D. Piper
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Proceedings recorded by digital sound recording;
transcript produced by transcription service.

1 OAKLAND, CALIFORNIA - FEBRUARY 25, 2015 - 9:04 A.M.

2 THE CLERK: All rise. This is the United States
3 Bankruptcy Court for the Northern District of California, the
4 Honorable Elaine Hammond presiding.

5 THE COURT: Good morning. Please be seated. Okay.
6 Good morning. We are here today for a trial on the objection
7 to claim in the matter of Anton and Denise Rivera. Let me
8 start by getting the parties' appearances, please.

9 MR. FRESHMAN: Good morning, Your Honor. Ron Freshman
10 appearing on behalf of the Riveras.

11 THE COURT: Okay.

12 MR. PEROVICH: Good morning, Your Honor. Stefan
13 Perovich appearing on behalf of creditor Deutsche Bank.

14 THE COURT: Okay.

15 MR. PIPER: Good morning, Your Honor. David Piper,
16 also with Keesal, Young & Logan, for creditor. And our client
17 Margaret Dyer is here as well.

18 THE COURT: Okay. It is nice to have some faces to go
19 with some voices I've had on the phone. Some I've seen, of
20 course, before.

21 But, all right. Let me start by I had sent on Monday an
22 order requiring a pretrial meet-and-confer by the parties,
23 because based on my review of the trial briefs that were
24 submitted it looked like a number of issues were actually not
25 in dispute as to facts. And if that's the case, that can help

1 winnow the issues for trial. So, have the parties met and
2 conferred?

3 MR. PEROVICH: Yes, Your Honor. We did meet and
4 confer regarding your pretrial order.

5 THE COURT: And so what's the report? Can you tell
6 which of these, if any, have you agreed to stipulate as to the
7 fact?

8 MR. PEROVICH: Your Honor, the creditor stipulates to
9 1 through 8.

10 THE COURT: Okay.

11 MR. PEROVICH: I believe that the Debtors had a couple
12 issues they were going to look into. I believe they had issues
13 with respect to #4 and #7.

14 THE COURT: Mr. Freshman, I'll let you --

15 MR. FRESHMAN: Yes, Your Honor. On #7, I guess my
16 concern is that the master servicer, or the master servicer who
17 is not Chase, had advanced funds to the Riveras' default, so
18 it's different because what our records are showing is that
19 Washington Mutual Securities is reporting them to actually
20 being advancing that. So I was just -- that particular issue,
21 I was concerned about.

22 THE COURT: Okay. So, --

23 MR. FRESHMAN: With regards to the source of funds,
24 Your Honor. We don't --

25 THE COURT: I picked up the term from the PSA because

1 MR. FRESHMAN: Escrow.

2 THE COURT: Okay.

3 MR. FRESHMAN: Yes. Yes, Your Honor.

4 THE COURT: All right. So, but again, that's the
5 legal issue. I'm looking at facts we need today as to what
6 somebody needs to get on the stand and tell me and explain, not
7 the legal issue of how I interpret the note and deed of trust.
8 Is there -- so, is there any dispute -- is there anything in
9 that calculation that's in dispute? Taxes, insurance? Or is
10 it just the minimum balance amount?

11 MR. FRESHMAN: The -- I don't know how to answer that,
12 Your Honor. I apologize.

13 THE COURT: Let me ask. Do you need trial testimony
14 as to the taxes?

15 MR. FRESHMAN: Yes.

16 THE COURT: Okay. Then it's in dispute.

17 All right. Okay. And then so the other issue that has
18 come up is -- this has an unusual history in that there's both
19 an adversary proceeding and an objection to claim that are
20 proceeding addressing the same claim. One has dealt with the
21 ability of Deutsche Bank to assert a secured claim. The other
22 has dealt with calculation of the claim balance. They've been
23 on separate tracks. It was -- the adversary was recently
24 reversed and remanded. We had a status conference. Frankly,
25 at this point, you have both tried to give me evidence in your

1 trial briefs on standing and you have both argued in motions in
2 limine that the other side should not be allowed to do so. So,
3 my question is: I had not planned on addressing that issue. In
4 many ways, it is a legal issue, though, and I don't know how
5 many of the facts are in dispute. I will not do it unless both
6 parties consent. But if both parties want to have the
7 opportunity to present the facts on that issue and then provide
8 supplemental legal briefing later, I will allow it, in the
9 interest of not requiring witnesses to appear twice, because in
10 many ways I think your facts are cross-overs with the facts
11 you're going to want on other issues, such as the note, the
12 deed of trust, what are the recorded documents, and the PSA.
13 There may be more. I don't know. But those are all clear
14 cross-overs with what you need for the objection to claim.

15 So, my question is, do the parties want to bring that issue
16 in here today to allow fact testimony on it, and I will provide
17 an opportunity for supplemental legal briefs if you want it.
18 If you don't want it and you want to waive it, fine with me.
19 But I wouldn't -- I'm telling you I wouldn't take it under
20 submission without giving you the opportunity to further brief
21 it, if you so choose.

22 MR. FRESHMAN: At this time, Your Honor, we would
23 decline.

24 THE COURT: Okay. That's fine. I'm not doing it
25 unless both agree, so --

1 A No.

2 (Counsel confer.)

3 MR. FRESHMAN: Strike that, Your Honor.

4 BY MR. FRESHMAN:

5 Q You also testified that you review chain of title and has
6 -- is that part of --

7 THE COURT: No. He's specifically -- that,
8 specifically, that's what is not a part of today's hearing, at
9 your choice.

10 MR. FRESHMAN: Okay. Okay. No problem.

11 BY MR. FRESHMAN:

12 Q Is there anything in ABSNet that indicates that the
13 certificate holders have made any type of reimbursement?

14 A No, there is not.

15 MR. FRESHMAN: I don't have any more questions, Your
16 Honor.

17 MR. PIPER: Your Honor, I don't know if now would be
18 a good time. I can cut my cross down substantially if I could
19 have about five minutes. I don't know if this is a good time
20 for a break.

21 THE COURT: It is a good time for a break. We will
22 reconvene at 3:25.

23 MR. PIPER: Thank you, Your Honor.

24 THE COURT: All right. We're in recess.

25 MR. FRESHMAN: Thank you very much.

1 Q And do you recognize the signatures?

2 A Yes.

3 Q And whose signatures are those?

4 A My husband and mine.

5 Q Okay. And can you flip the page? And I'm sorry, keep
6 flipping until you get to a statement that says, that starts
7 off saying, Here are the bullet points of our financial
8 dilemma?

9 A Here are the bullet points? Would you refer to a page,
10 please?

11 Q You know, and I apologize, it's not --

12 A What --

13 Q It's the document that's just a -- it looks like a
14 printout of a letter.

15 A Uh-huh.

16 Q And it's not --

17 A You mean the last one?

18 Q Yes.

19 A Yes, sir.

20 Q Okay. Thank you. If you flip to the next page, --

21 A Yes, sir.

22 Q -- if you see that first paragraph, it's not the first
23 full paragraph, but the last sentence there.

24 A I'm sorry. Yes, sir.

25 Q And the last sentence in that paragraph states, Looking

D. Rivera - Cross

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1 back, we saw the presentation of this loan was very quick and
2 we didn't ask the right questions. We blame only ourselves
3 for our rash actions.

4 A We blame only ourselves for our rash actions. Yes.

5 Q Okay.

6 A That's what it says.

7 Q And then can you flip the page again, Ms. Rivera?

8 A Yes, sir.

9 Q Do you recognize the signatures on the last page of this
10 document?

11 A Yes. My husband and mine.

12 Q Okay.

13 MR. PEROVICH: Your Honor, I'd like to enter this
14 document into evidence.

15 MR. FRESHMAN: We're okay.

16 THE COURT: Okay. There being no opposition, Exhibit
17 RR is admitted.

18 (Deutsche Bank's Exhibit RR is received into evidence.)

19 MR. PEROVICH: Your Honor, if I can just have two
20 minutes. I'm trying to cut out things here in --

21 THE COURT: That's fine. We'll just all sit here,
22 but take two minutes. That's fine.

23 (Pause, 4:12 p.m. to 4:14 p.m.)

24 BY MR. PEROVICH:

25 Q Ms. Rivera, can I ask you -- and I'll pick up the book for

D. Rivera - Cross

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1 that your last payment on your loan was made in December of
2 2009; isn't that correct?

3 A We made a trial plan payment of \$1,736. So, the answer to
4 that is yes.

5 Q In December of 2009; is that correct?

6 A Yes.

7 MR. FRESHMAN: Objection, misstates testimony.

8 THE COURT: What's the misstatement?

9 MR. FRESHMAN: The misstatement is that I asked her
10 specifically if she stopped making payments, she stopped
11 making payments because that she was told to stop making
12 payments, and that she continued to make payments.

13 THE COURT: No, then she made the three trial plan
14 payments and then she hasn't made anything until she started
15 paying the \$1,000 a month into -- during the bankruptcy case.

16 BY MR. PEROVICH:

17 Q So, Ms. Rivera, if you -- so, this letter is dated March
18 31, 2010, so it's just a few months after you stopped making
19 payments. Is that correct?

20 A This -- well, it says three months. So it's not a few
21 months. This is three months, right?

22 Q You're exactly right. I was not being very precise. So,
23 if you look towards the bottom of this document, do you see
24 the part where it says, Unpaid principal balance of your loan
25 will be adjusted as follows? Do you see that section?

EXHIBIT B

Norton, Joshua

From: Ron Freshman [<mailto:ronfreshman@gmail.com>]

Sent: Monday, September 28, 2015 4:12 PM

To: Perovich, Stefan

Subject: Rivera matter

Hi Stefan,

I wanted to know if you would oppose our Filing a Notice of Stay pending outcome of BAP ruling.

This is for 15-1280 Anton Rivera, et al v. Deutsche Bank National Trust "District Court Case No. received" (14-54193).

Please let me know at your earliest convenience but prior to the end of the week.

Much appreciated,

Ron

EXHIBIT C

Norton, Joshua

From: Brouttier, Blake
Sent: Thursday, October 15, 2015 11:14 AM
To: 'ronfreshman@gmail.com'
Cc: Perovich, Stefan
Subject: Anton and Denise Rivera
Attachments: Denise Rivera Notice of Trustee's Sale.pdf; Anton Rivera Notice of Trustee's Sale (certified) .pdf; Denise Rivera Notice of Trustee's Sale (certified).pdf; Anton Rivera Notice of Trustee's Sale (certified) .pdf

Dear Mr. Freshman:

Attached please find the Notice of Trustee's Sale for Anton and Denise Rivera's property. Hard copies to follow via Certified Mail.

.....
Blake Brouttier
Legal Assistant
Keesal, Young & Logan
400 Oceangate, Long Beach, CA 90802
562.436.2000 (office) | 562.436.7416 (fax)
blake.brouttier@kyl.com | www.kyl.com



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Case Name: *Anton Andrew Rivera and Denise Ann Rivera v. Deutsche Bank National Trust Company, etc., et al.*

Case No.: USDC Northern District Case No. 15-CV-04402

KYL File No.: 7365-1231

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is Keesal, Young & Logan, 400 Oceangate, Long Beach, California 90802.

On November 2, 2015, I served the foregoing documents described as **DECLARATION OF JOSHUA NORTON IN SUPPORT OF OPPOSITION TO DEBTORS' EMERGENCY MOTION FOR STAY PENDING APPEAL** on the parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Ronald F. Freshman
Law Offices of Ronald H. Freshman
3040 Skycrest Drive
Fallbrook, California 92028
Telephone: (858) 756-8288
Attorney for Appellants

☒ BY CM/ECF: The document was electronically served on the parties to this action via the mandatory United States District Court of California CM/ECF system upon electronic filing of above-described document.

Executed on November 2, 2015 at Long Beach, California.

I declare under penalty of perjury under the laws of the State of California and United States of America that the foregoing is true and correct.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.



BLAKE BROUTTIER